Godrej Sara Lee Ltd v Siah Teong Teck & Anor (Part 1)

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO D5–25–2 OF 2007
RAMLY ALI J
9 JULY 2007

Civil Procedure — Parties — Striking out of — Second respondent the registrar of trade marks — Whether necessary to join the registrar of trade marks to give effect to court order, if any for rectification of trade marks register — Whether applicant's action against second respondent scandalous, frivolous or vexatious

This was an application by the second respondent, the registrar of trade marks Malaysia to strike out the applicant's action under O 18 r 19(1) of the Rules of the High Court 1980 ('RHC') on the grounds that the applicant's amended notice of motion did not disclose a cause of action against the second respondent and the action against the second respondent was frivolous, vexatious and an abuse of process. The applicant had applied for an order to be granted to rectify and remove trade mark No 98/00228 from the trade mark register, Malaysia under the provisions of s 46(1)(b) of the Trade Marks Act 1976 ('the Act') which provided for the cancellation of a trade mark which had not been used for a continuous period of three years up to one month before the application to cancel. The applicant had named the second respondent in the amended notice of motion in order to give effect to their order, if granted so that an order for rectification would be binding on the second respondent. The second respondent opposed the applicant's application. At the same time, the second respondent filed an application to strike out the applicant's action against it.

Held, striking out applicant's action:

(1) It was crystal clear that the grievances claimed by the applicant was solely against the first respondent only and that the applicant had failed to establish a cause of action against the second respondent. The applicant's prayers for reliefs against the second respondent were merely for the second respondent to take the necessary action of rectifying the register of trade marks once the order was granted by the court. This relief was governed by statutory provisions in the Act and in view thereof, there was no necessity for the applicant to make the second respondent a party to this suit. On this ground alone, the action against the second respondent ought to be dismissed (see paras 17–18).

(2) The applicant's application vide the notice of motion was made pursuant to s 46(1)(b) of the Act and the issue here was whether the second respondent need to be cited as a party or as a respondent. The court was of the view that the second respondent need not be cited as a party or respondent in the present

application. Other than exercising his duties and obligations under the statutes, the second respondent did not possess any interest in the outcome of the case (see paras 23, 25–26).

(3) It was to be noted that under O 87 r 4 of the RHC there was a requirement for all applications to the court under the Act to be served on the registrar of trade marks. It did not require the registrar to be made a party. Section 62(1) of the Act clearly states that in any legal proceedings, including application for rectification or alteration of the register, the registrar shall have the right to appear and be heard, and shall appear if so directed by the court. The registrar was supposed to be aware of such proceedings by virtue of reg 74 of the Trade Marks Regulations 1997 which states that a copy of every application to the court under the Act shall be filed at the office of the registrar by the applicant (see paras 27 & 29).

(4) If the assistance of the registrar of trade marks was required at any stage of the court proceedings, a subpoena may be served on the registrar of trade marks for purposes of assisting the court in explaining any matters relating to the trade mark in issue without the need to make the registrar of trade marks a party to the action (see para 32).

(5) It was obvious from the provision of s 45(1)(d) of the Act, that if the court decided at the conclusion of the proceedings, to expunge any entry remaining wrongfully in the register of trade marks, thus rectifying the register of trade marks, then the order which acts as the notice of the rectification shall be served on the registrar of trade marks for rectification purpose. The registrar of trade marks shall, upon receipt of the notice, take such steps as are necessary to give effect to the order issued by the court as it is the registrar of trade marks' statutory obligation to do so in accordance with the Act (see para 37).

[Bahasa Malaysia summary

Ini adalah permohonan responden kedua, pendaftar cap dagangan Malaysia untuk membatalkan tindakan pemohon di bawah A 18 k 19(1) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') atas alasan bahawa pemohon notis usul yang terpinda tidak mendedahkan satu kausa tindakan terhadap responden kedua dan tindakan terhadap responden kedua adalah remeh, menyusahkan dan satu penyalahgunaan proses. Pemohon telah memohon satu perintah diberikan untuk membetulkan dan mengeluarkan cap dagangan No 98/00228 daripada daftar cap dagangan Malaysia di bawah peruntukkan-peruntukkan s 46(1)(b) Akta Cap Dagangan 1976 ('Akta tersebut') yang memperuntukkan untuk pembatalan cap dagangan yang telah tidak digunakan untuk sepanjang jangkamasa berterusan selama tiga tahun sehingga satu bulan sebelum permohonan dibatalkan. Pemohon telah menamakan responden kedua di notis usul yang terpinda untuk memberi efek kepada perintah mereka, sekiranya diberikan supaya satu perintah untuk pembetulan akan terikat terhadap responden kedua. Responden kedua telah menentang permohonan pemohon. Pada masa yang sama, responden kedua telah memfailkan satu permohonan untuk membatalkan tindakan pemohon terhadapnya.

Diputuskan, membatalkan tindakan pemohon:

(1) Ia adalah jelas bahawa aduan-aduan yang dituntut oleh pemohon adalah hanya terhadap responden pertama sahaja dan pemohon telah gagal menubuhkan satu kausa tindakan terhadap responden kedua. Pemohon memohon relif-relif terhadap responden kedua hanya untuk responden kedua mengambil tindakan sewajarnya untuk memperbetulkan daftar cap dagangan apabila perintah diberikan oleh mahkamah. Relif ini dikuasai oleh peruntukkan-peruntukkan statutori di Akta tersebut dan dengan itu, tiada keperluan untuk pemohon untuk menjadikan responden kedua sebagai pihak kepada tindakan ini. Atas alasan ini sahaja, tindakan terhadap responden kedua patut dibatalkan (lihat perenggan 17–18).

(2) Permohonan pemohon melalui notis usul dibuat mengikut s 46(1)(b) Akta tersebut dan isu di sini ialah sama ada responden kedua perlu dimasukkan sebagai seorang pihak atau seorang responden. Mahkamah berpendapat bahawa responden kedua tidak perlu dimasukkan sebagai seorang pihak atau responden dalam permohonan ini. Selain daripada menjalankan tanggungjawab dan obligasinya di bawah statut, responden kedua tidak mempunyai sebarang kepentingan dalam hasil kes tersebut (lihat perenggan 23, 25–26).

(3) Ia patut diperhatikan bahawa di bawah A 87 k 4 KMT terdapat keperluan untuk segala permohonan-permohonan ke mahkamah di bawah Akta tersebut disampaikan kepada pendaftar cap dagangan. Ia tidak perlu untuk pendaftar dijadikan satu pihak. Seksyen 62(1) Akta tersebut dengan jelas menyatakan bahawa dalam apa juga prosiding undang-undang, termasuk permohonan untuk membetulkan atau mengubah daftar tersebut, pendaftar akan mempunyai hak untuk hadir dan didengar, dan juga hadir sekiranya diarahkan oleh mahkamah. Pendaftar sepatutnya mengetahui sebarang prosiding-prosiding menurut peraturan 74 Peraturan-Peraturan Cap Dagangan 1997 yang menyatakan bahawa sesalinan segala permohonan ke mahkamah di bawah Akta tersebut mesti difailkan di pejabat pendaftar oleh pemohon (lihat perenggan 27 & 29).

(4) Sekiranya bantuan daripada pendaftar cap dagangan diperlukan pada sebarang peringkat prosiding mahkamah, satu sepina boleh diserahkan kepada pendaftar cap dagangan untuk tujuan membantu mahkamah dalam menjelaskan sebarang perkara berhubung dengan cap dagangan tersebut tanpa perlu untuk pendaftar cap dagangan dijadikan pihak kepada tindakan (lihat perenggan 32).

(5) Ia adalah jelas daripada peruntukkan s 45(1)(d) Akta tersebut, bahawa sekiranya mahkamah memutuskan pada kesimpulan prosiding, untuk mengeluarkan sebarang kemasukan yang masih wujud secara tidak sah di daftar cap dagangan, dengan itu memperbetulkan daftar cap dagangan, maka perintah yang bertindak sebagai notis untuk memperbetulkan akan diserahkan kepada pendaftar cap dagangan untuk tujuan pembetulan. Pendaftar cap dagangan dikehendaki, apabila menerima notis tersebut, mengambil langkah-langkah yang perlu untuk memberi efek kepada perintah

yang dikeluarkan oleh mahkamah oleh kerana ia merupakan obligasi statutori pendaftar cap dagangan untuk berbuat demikian mengikut Akta tersebut (lihat perenggan 37).]

Notes

For cases on striking out of parties, see 2(2) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 5149–5153.

Cases referred to

Boey Oi Leng (t/a Indah Reka Construction & Trading) v Trans Resources Corp Sdn Bhd [2001] 4 AMR 4807 (refd)
Cooke v Gill (1872–73) 8 LRCP 107 (refd)
Drummond-Jackson v British Medical Association [1979] 1 All ER 1094 (refd)
First Malaysia Finance Bhd v Dato' Mohd Fathi bin Haji Ahmad [1993] 2 MLJ 497 (refd)
Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin & Ors [1998] 1 SLR 374 (refd)
Government of Malaysia v Lim Kit Siang [1988] 2 MLJ 12 (refd)
Newacres Sdn Bhd v Sri Alam Sdn Bhd [1991] 3 MLJ 474 (refd)
Technointan Holding Sdn Bhd v Tetuan Tan Kim Siong & Teh Hong Jet [2007] 1 MLJ 163 (refd)

Legislation referred to

Rules of Court 1996 [Sing] O 18 r 19(1)(a)
Rules of the High Court 1980 O 18 r 19(1)(a), (b), (c), (d), O 87 rr 4, 7
Trade Marks Act 1976 ss 45, 46(1)(b), 62(2)
Trade Marks Regulations 1997 regs 74, 75(1)

S Indrani (Shearn Delamore & Co) for the applicant.
LG Sha (Sha Lai Gwen & Associates) for the first respondent.
C Valasini (Rahamatthunnisa with her) (YH Teh & Qwek) for the second respondent.

Ramly Ali J:

[1] The matter for determination before the court is the second respondent's application (encl 11) to strike out the action herein against the second respondent, the Registrar of Trade Marks Malaysia. The grounds relied upon by the second respondent were that the motion filed by the applicant does not disclose a cause of action against the second respondent, that the action against the second respondent is frivolous, vexatious and an abuse of process pursuant to O 18 r 19(1)(a), (b), (c) and (d) of the Rules of the High Court 1980 ('the RHC').

[2] The applicant, by it's amended notice of motion prays for the following orders:

(a) that an order be granted to rectify and remove Trade Mark No 98/00228 from the Trade Mark Register, Malaysia; and

(b) in the event prayer 1 is granted, an order directing the Trade Marks Registrar to rectify the Trade Marks Register of Malaysia by removing from it the entire

A entry in relation to Trade Mark Registration No 98/00228 and to cause the said fact of rectification and removal to be advertised in the Government Gazette as soon as the order is served.

FACTUAL BACKGROUND

B

[3] The applicant is an Indian company carrying on the business of manufacturing, distributing, supplying, selling and offering for supply various consumer goods around the world, including Malaysia. Amongst the applicant's goods of interests are 'mosquito repellant mats and coils, insecticides; pesticides and insect repellant substances'.

C

[4] The said goods aforementioned carry various trade marks as source identifiers of the said goods of the applicant and among the trade marks employed in relation to the said goods is the trade mark GOOD KNIGHT.

D

[5] The applicant applied to protect their rights in Malaysia when they filed for registration of the trade mark GOOD KNIGHT which was designated application no 2001/09651 on 25 July 2001 by the Registrar of Trade Marks. The applicant's mark was objected to by the Trade Marks Registrar as there was a prior registration of the same mark on the Register of Trade Marks under registration no 98/00228.

E

[6] The prior registration no 98/00228 which was also the trade mark GOOD KNIGHT was in the name of the first respondent and was registered in relation to mosquito coils, insecticides, mosquito repellant in Class 5 in Malaysia (the first respondent's trade mark).

F

[7] Upon investigations conducted, it was found that the first respondent's trade mark GOOD KNIGHT had not been used in relation to the goods of interest to the first respondent as set out in the specification under the first respondents said trade mark registration for a continuous period of three years up to one month immediately preceding the application to cancel the said registration.

G

[8] This non use resulted in the present notice of motion filed by the applicant under the provisions of s 46(1)(b) of the Trade Marks Act 1976 which provides for the cancellation of a trade mark which has not been used for a continuous period of three years up to one month before the application to cancel.

H

[9] The applicant has named the second respondent in the amended notice of motion in order to give effect to prayer (b) so that an order for rectification made pursuant to prayer (a) will be binding on the Registrar of Trade Marks, Malaysia.

I **[10]** The second respondent (the Registrar of Trade Mark Malaysia) opposes the applicant's application. At the same time, vide encl 11, the second respondent filed an application to strike out the applicant's action against the second respondent

under O 18 r 19(1) of the RHC on the grounds that the applicant's amended notice of motion does not disclose a cause of action against the second respondent and the action against the second respondent in frivolous, vexatious and an abuse of process.

O 18 r 19(1)(a) OF THE RHC

[11] Under this limb, the court may at any stage of the proceedings order to be struck out any pleading on the ground that it discloses no reasonable cause of action. In the case of *Newacres Sdn Bhd v Sri Alam Sdn Bhd* [1991] 3 MLJ 474. The court at p 480 referred to the case of *Cooke v Gill* (1872–73) 8 LRCP 107 whereby in that case Bovil CJ define 'cause of action' as follows:

> Cause of action has been held from the earliest times to mean every fact which is material to be proved to entitle the applicant to succeed — every fact which the defendant would have a right to traverse.

[12] Furthermore, in the case of *First Malaysia Finance Bhd v Dato' Mohd Fathi bin Haji Ahmad* [1993] 2 MLJ 497, the Supreme Court held at p 507 that:

> It is true that the plaintiff had by his statement of claim prayed for are restraining order and an order for damages and, indeed, we note that he had also prayed for an order for release and transfer of all securities in respect of the loan accounts in annexure K together with any assignment of rights, the fifth defendant might have against the borrower companies and the securities listed in annexure K. But these were merely prayers for reliefs and did not themselves indicate what the cause of action was upon which the plaintiff was relying against the fifth defendant.

[13] An application under O 18 r 19(1)(a) of the RHC 1980 requires a perusal of the pleadings to ascertain whether it does in fact disclose a reasonable 'cause of action'. In *Government of Malaysia v Lim Kit Siang* [1988] 2 MLJ 12 at p 19 the Supreme Court defined 'cause of action' as:

> … a statement of facts alleging that a plaintiff's right, either at law or by statute, has in some way or another, been adversely affected or prejudiced by the act of the defendant in an action.

[14] In *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin & Ors* [1998] 1 SLR 374 at p 384 the Singapore Court of Appeal discussed the principles in determining what a 'reasonable cause of action' is under O 18 r 19(1)(a) of the Rules of Court 1996 at p 384 by reference to the case of *Drummond-Jackson v British Medical Association* [1979] 1 All ER 1094:

> A reasonable of action, according to His Lordship, connotes a cause of action which has some chance of success when only the allegations in the pleading are considered.

[15] In the context of O 18 r 19(1)(a) of the RHC, it is useful to remember that in perusing the plaintiff's pleadings the court is looking at the plaintiff who has pleaded his best case. The above principles are then applied to the plaintiff's best case to see if those pleadings ought to be struck out.

[16] Relying on the definition of cause of action as stated in the above case, the court finds that there is not even a single cause of action against the second respondent in the applicant's notice of originating motion and its affidavit supporting the same.

[17] In the present case, it is crystal clear that the grievances claimed by the applicant is solely against the first respondent only and that the applicant has failed to establish a cause of action against the second respondent. The applicant's prayers for reliefs against the second respondent are merely for the second respondent to take the necessary action of rectifying the Register of Trade Marks once the order is granted by the court. This relief is governed by statutory provisions in the Trade Marks Act 1976 and in view thereof, there is no necessity for the applicant to make the second respondent a party to this suit.

[18] On this ground alone, the action against the second respondent ought to be dismissed.

O 18 r 19(1)(b) and (d) OF THE RHC

[19] Under O 18 r 19(1)(b) and (d) of the RHC, the court may at any stage of the proceedings order to be struck out any writ and statement of claim in the action on the ground that (b) it is scandalous, frivolous or vexatious; or (d) it is otherwise an abuse of the process of the court.

[20] The word 'scandalous' is taken to mean 'wholly unnecessary and irrelevant', not just unpleasant allegations. (see *Boey Oi Leng (t/a Indah Reka Construction & Trading) v Trans Resources Corp Sdn Bhd* [2001] 4 AMR 4807; and *Technointan Holding Sdn Bhd v Tetuan Tan Kim Siong & Teh Hong Jet* [2007] 1 MLJ 163).

[21] The words 'frivolous or vexatious' on the other hand, mean 'obviously unsustainable' (see *Technointan Holding Sdn Bhd*).

[22] The case of *Gabriel Peter*, addressed the meaning of 'an abuse of the process of the court'. At p 384 the Court of Appeal, Singapore said:

> The term 'abuse of the process of the court', in O 18 r 19(1)(d), has been given a wide interpretation by the courts. It includes considerations of public policy and the interests of justice. This term signifies that the process of the court must be used bona fide and properly and must not be abused. The court will prevent the improper use of its machinery. It will prevent the judicial process from being used as a means of vexation and oppression in the process of litigation. The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed and will depend on all relevant circumstances of the case. A type of conduct which has been judicially acknowledged as an abuse of process is the bringing of an action for a collateral purpose … if an action was not brought bona fide for the purpose of obtaining relief but for some other ulterior or collateral purpose, it might be struck out as an abuse of the process of the court.

[23] The applicant's application vide the notice of motion is made pursuant to s 46(1)(b) of the Trade Marks Act 1976, which states inter alia that the court may on the application by a person aggrieved, order a trade mark to be removed from the Register in respect of any of the goods or services in respect of which it is registered on the ground that up to one month before the date of the application a continuous period of not less that three years had elapsed during which the trade mark was a registered trade mark and during which there was no use in good faith of the trade mark in relation to those goals or services by the registered proprietor or registered user of the trade mark for the time being.

[24] Section 46 of the Trade Marks Act 1976 is a specific provisions which set out one of the grounds of removal (vis on the ground of non-use) which the person aggrieved may raise in order for the court to make an order that a trade mark be removed from the Register.

[25] The issue here is whether the second respondent (the Register of Trade Marks, Malaysia) need to be cited as a party or as a respondent in this present application by the applicant.

[26] The court is of the view that the second respondent (the Registrar of Trade Marks, Malaysia) need not be cited as a party or respondent in the present application. There is no necessity for such a citation. Other than exercising his duties and obligations under the statutes, the second respondent does not possess any interest in the outcome of the case.

[27] It is to be noted that under O 87 r 4 of the RHC there is a requirement for all applications to the court under the Trade Marks Act 1976 to be served on the Registrar of Trade Marks. It does not require the Registrar to be made a party. Also, under O 87 r 7 RHC a defendant in an action for infringement may, in regard to any registered trade mark in issue, counterclaim for the rectification of the register and shall within the time limited for the delivery of the counterclaim serve the Registrar with the same, and the Registrar shall be entitled to take such part in the action as he may think fit without delivering a defence or other pleading. It is clear that under this rule the Registrar is not required to deliver any pleading. This particular rule lends support to the view that there is no necessity on the part of the applicant to make the Registrar a party to the suit and the Registrar can be directed to appear in court as envisage by s 62 of the Trade Marks Act 1976 which states that in any legal proceedings in which the relief sought includes alteration or rectification of the Register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the court.

[28] One should also take note of reg 74 of the Trade Marks Regulations 1997 whereby it is required that every application to the court under the Act is to be served on the Registrar. There will not be such a special requirement for such service if the Registrar is to be named as a party to the action in order to be bound by any order of the court, because all parties to a suit will be served with the cause papers anyway. Also under reg 75(1) of the Trade Marks Regulations 1997 an order made by the court in any case under the Act and an order of court directing the rectification or

alteration of the Register is to be served upon the Registrar of Trade Marks under Form TM28 accompanied by the prescribed fee.

[29] Section 62(1) of the Trade Marks Act 1976 clearly states that in any legal proceedings, including application for rectification or alteration of the Register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the court. The Registrar is supposed to be aware of such proceedings as reg 74 of the Trade Marks Regulations 1997 states that a copy of every application to the court under the Act shall be filed at the Office of the Registrar by the applicant.

[30] The applicant ought to have followed this provision strictly and not to make the Registrar of Trade Marks, a party to this action as this section allows the Registrar to appear in court if the Registrar of Trade Marks wishes to do so in carrying out his statutory obligations and further that the Registrar of Trade Marks shall appear in court if the court so directs him do so. The appearance of the Registrar of Trade Marks in court regarding a particular case as such, is totally up to the Registrar of Trade Marks and/or the court and it is not up to the applicant to make the Registrar of Trade Marks a party to an action.

[31] Section 62(2) of the Act further states inter alia that unless otherwise directed by the court, the Registrar of Trade Marks, in lieu of appearing and being heard, may submit to the court a statement in writing signed by him and such statement shall be deemed to form part of the evidence in court. This additional provision further illustrates that the Registrar of Trade Marks merely appears in court to assist the court whenever such assistance is required and this section obviously does not state that the Registrar of Trade Marks ought to be made a party to the action.

[32] If the assistance of the Registrar of Trade Marks is required at any stage of the court proceedings, a subpoena may be served on the Registrar of Trade Marks for purposes of assisting the court in explaining any matters relating to the trade mark in issue without the need to make the Registrar of Trade Marks a party to the action.

[33] If the application is made under s 45 of the Trade Marks Act 1976, the position is clearer i.e. that the Registrar of Trade Marks Malaysia need not be made a party or respondent in the proceeding before the court.

[34] Section 45(1) of the Trade Marks Act 1976 states as follows:

> Subject to the provisions of this Act —
>
> (a) the court may on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the Register of any entry or by any entry made in the Register without sufficient cause or by any entry wrongfully remaining in the Register, or by any error or defect in any entry in the Register, make such order for a making, expunging or varying such entry as it thinks fit;
>
> (b) the court may in any proceeding under this section decide any question that may be necessary or expedient to decide in connection with the rectification of the Register;

(c) in case of fraud in the registration, assignment or transmission of a registered trade mark or it in his opinion it is in the public interest to do so, the Registrar may himself apply to the court under this section;

(d) an order of the Court rectifying the Register shall direct that notice of the rectification be served on the Registrar in the prescribed manner and the Registrar shall upon receipt of the notice rectify the Register accordingly.

[35] Section 45(1)(a) of the Act clearly specifies that subject to the provisions of the Act, the court may on the application of any person aggrieved by any entry wrongfully remaining in the Register, make such order for making, expunging or graying such entry as the court thinks fit. Section 45(1)(b) of the Act further stipulates that the court may in any proceeding under this section, decide any question that may be necessary or expedient to decide, in connection with the rectification of the Register.

[36] The court wishes to highlight the clear wordings of s 45(1)(d) of the Act which states that an order of the court rectifying the Register of Trade Marks shall direct that notice of the rectification be served on the Registrar of Trade Marks and the Registrar of Trade Marks shall upon receipt of the notice, rectify the Register of Trade Marks accordingly.

[37] It is obvious from the provision of this s 45(1)(d) of the Act, that if the court decides at the conclusion of the proceeding, to expunge any entry remaining wrongfully in the Register of Trade Marks, thus rectifying the Register of Trade Marks, then the order which acts as the notice of the rectification shall be served on the Registrar of Trade Marks for rectification purpose. The Registrar of Trade Marks shall, upon receipt of the notice, take such steps as are necessary to give effect to the order issued by the court as it is the Registrar of Trade Marks' statutory obligation to do so in accordance with the Act.

CONCLUSION

[38] Based on the above considerations, the court rules that there is no necessity for the second respondent (the Registrar of Trade Marks Malaysia) to be made a party or respondent in the present application by the applicant. There are sufficient statutory provisions in the Trade Marks Act 1976, it's regulations as well as in the Rules of the High Court 1986 (as considered above), the ensure that any decision or order of the court in relation to the Register of Trade Marks, be complied with by the Registrar accordingly, without having to be a party to the proceeding. On that understanding, the court is of the view that there is no reasonable cause of action against the second respondent in the present case. The court is also of the view that the applicant's action against the second respondent is scandalous (being wholly unnecessary and irrelevant), frivolous or vexatious or that it amounts to an abuse of the process of the

court. On that grounds, the court orders that the applicant's action against the second respondent be struck out under O 18 r 19(1)(a), (b) and (d) of the RHC with costs.

Applicant's action struck out.

Reported by Sally Kee